

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification of the) Docket No. 99-AFC-2
THREE MOUNTAIN POWER PROJECT)
(OGDEN ENERGY, INC.))
-----)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, APRIL 26, 2001
1:35 P.M.

Reported by:
Valorie Phillips
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman, Presiding Member

Edwin Bouillon, Jr., Hearing Officer

Cynthia Praul, Advisor to Chairman Keese

STAFF PRESENT

Dick Ratliff, Staff Counsel

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

Tuan Ngo

Steve Baker

Connie Bruins

REPRESENTING THE APPLICANT

Martin J. McFadden, Jr., Vice President

Covanta Energy Americas, Inc.

Three Mountain Power

Ann T. MacLeod, Attorney

White and Case

Les Toth, P.E., Project Manager

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 1:35 p.m.

3 PRESIDING MEMBER KEESE: Call to order
4 this conference on the Presiding Member's Proposed
5 Decision on the application for certification of
6 the Three Mountain Power project.

7 I'm Bill Keese, Chair of this Committee,
8 hearing docket number 99-AFC-2. To my right is
9 Cynthia Praul, my Advisor. To my left, Mr. Ed
10 Bouillon, who will handle this matter for us.

11 Why don't we just introduce the parties
12 here. Applicant?

13 MR. McFADDEN: Marty McFadden, Vice
14 President for Three Mountain Power.

15 MS. MacLEOD: Ann MacLeod from White and
16 Case, attorneys for Three Mountain Power.

17 MR. TOTH: Les Toth, Project Manager for
18 Three Mountain Power.

19 PRESIDING MEMBER KEESE: And for staff?

20 MR. BUELL: I'm Rick Buell; I'm the
21 Project Manager for staff. To my right is Caryn
22 Holmes, one of staff's attorneys on the case. And
23 in the audience we have Steve Baker, our noise
24 expert, as well as other technicals. We have
25 Connie Bruins, who's compliance person. And we

1 have Tuan Ngo, who is our air quality expert.

2 PRESIDING MEMBER KEESE: And I don't
3 believe we have representation from any of the
4 intervenors, but are there any -- is there any
5 representation of the intervenors? We have
6 received communication generally that they would
7 not be in attendance. Seeing none.

8 Mr. Bouillon.

9 HEARING OFFICER BOUILLON: I have
10 received an email from the Burney Resource Group
11 indicating they will not be present, but will
12 concentrate on preparing written comments for
13 docketing no later than May 14th. I don't know
14 whether or not that's the 30 days or not, but it
15 is approximately so.

16 For the record I will note that any
17 comments received within the 30-day comment period
18 will be considered by the Committee and
19 incorporated into an errata or, if necessary, a
20 revised opinion.

21 I've also received a communication from
22 Bob -- forwarded to me from Bob Longstreth
23 representing Black Ranch, with a minor comment.
24 Did the applicant receive a copy of that, also?

25 MS. MacLEOD: Yes, we did.

1 HEARING OFFICER BOUILLON: They were
2 concerned that they simply weren't mentioned as an
3 intervenor; that was an oversight, and that will
4 be corrected.

5 I received written comments from TANC,
6 somewhat critical of the decision, but with no
7 specific comments. Their comments will be
8 considered.

9 I'd like now to turn to the staff
10 comments first. And the way I'd like to handle
11 this is to go through them not one by one, because
12 many of them I don't think requires any comment
13 from any of the parties, nor comments by the
14 Committee. Most of them will be incorporated.

15 But I'd like to bring up the comments
16 one by one that require some discussion. The
17 first one is on page 45, dealing with facility
18 design.

19 The question is what the timeframe is
20 for the applicable building codes and regulations
21 being enforced. What we put in the decision was
22 at the time construction actually begins. Staff
23 had suggested at the time initial designs were
24 submitted for review, I'm not clear on what the
25 law is with respect to if you were simply getting

1 a building permit, whether you have to comply only
2 with building codes at the time you submit your
3 design, or if they were revised you'd have to
4 update them to the time your construction began.

5 So, I'd ask for a comment from the
6 applicant about their feelings about that
7 particular statement.

8 MR. McFADDEN: I think that it doesn't
9 make much of a difference to us. I think that if
10 you were building this project with the County
11 acting as the CBO you would be expected to be
12 submitting design documents in advance of the
13 actual start of some of the construction. And
14 that at the time that you made that first
15 submittal, that would probably, I think, then lock
16 in the start time for, or the grandfathering time
17 for being in compliance with the codes in effect
18 at that time.

19 So, as a practical matter we don't have
20 a problem with either wording.

21 HEARING OFFICER BOUILLON: Now, turning
22 the page, the remainder of those items, under
23 power plant efficiency, especially, there's no
24 problem with any of those changes.

25 With regard to transmission system

1 engineering, staff had suggested a change, this is
2 at the top of page 2. After talking to the ISO
3 they have suggested a change to the change, which
4 is contained in the email from, I think I received
5 that from Mr. Buell this morning.

6 Has the applicant received that email?

7 MR. McFADDEN: Yes, we have.

8 HEARING OFFICER BOUILLON: Okay, I'm
9 going to read that into the record so that I'm
10 sure we're all talking about the same language at
11 this point.

12 With respect to page 85, under the
13 heading of system reliability, the second sentence
14 should be modified, as follows, and I'm going to
15 leave out the strike-throughs, but I will read the
16 sentence as staff now proposes it to be:

17 "PG&E will provide interconnection service to
18 the project. Cal-ISO will provide
19 transmission service to the project and will
20 be the agency responsible for maintaining
21 reliability of their controlled grid."

22 I'd ask the applicant if that reflects
23 their understanding of the relationship between
24 themselves, PG&E and Cal-ISO?

25 MR. McFADDEN: Yes, it does. And

1 parties to that, the PG&E and Cal-ISO and TANC and
2 the applicant have been discussing that at some
3 length in the development of the SMOPs and the
4 language proposed by the staff in the second
5 instance, which was proposed by Peter Mackin, we
6 believe to be correct.

7 HEARING OFFICER BOUILLON: The next,
8 drawing your attention to page 217 of the PMPD,
9 with regard to items 9, 10 and 11, staff suggested
10 that the three of them should be combined.

11 I've looked at that, and in fact, 9 and
12 10 should be combined as suggested by applicant;
13 11 stands alone. Accordingly, item 12 will be re-
14 numbered -- item 11 will be renumbered to 10, and
15 item 12 will be renumbered to 11.

16 The next comment, page 202, where they
17 say a sentence is missing a verb. In fact, what
18 is missing is a conjunction.

19 (Laughter.)

20 HEARING OFFICER BOUILLON: They are
21 correct that the sentence they questioned has no
22 verb in it, but it will if after the word sculpins
23 that period is removed, and the word and "a-n-d"
24 is inserted, we will then have a complete sentence
25 with a verb.

1 On page 232 through 236 discussing
2 hydrology of the area, I would like the applicant
3 to comment generally on all items contained on the
4 bottom half of page 2, page 3 and the very top of
5 page 4 with respect to any differences they have
6 with the statements made by staff in their
7 comments.

8 MS. MacLEOD: There are a number of
9 minor corrections the staff has made here with
10 which the applicant does not disagree.

11 Several of the other changes,
12 particularly the ones with the longer text, are
13 really not in the nature of correction, but in our
14 view, frankly, look to be as though the staff is
15 seeking to bolster the discussion that was
16 included in the PMPD of the staff's view and
17 analysis of the hydrology of the area.

18 We are satisfied that the PMPD is
19 thorough and that it comes to conclusions and
20 includes conditions that were agreed upon between
21 staff and the applicant after very very lengthy
22 discussions, along with other intervenors, and we
23 do not believe that the PMPD requires further
24 revision.

25 We also would like to avoid any

1 substantive revision that might be characterized
2 as requiring a revised PMPD. So we think several
3 of these changes are unnecessary.

4 We do not object to -- if the Committee
5 decides to add some of the discussion that is in
6 here and make it clear that this is staff's
7 analysis, to the extent that this was staff's
8 analysis.

9 I believe that some of what is here,
10 particularly on page 234, may go beyond what was
11 presented clearly at hearings or in testimony and
12 amount to some kind of supplemental testimony. So
13 I have some concern about including that.

14 We had one specific comment which we
15 thought was confusing and which used numbers that
16 were not previously included in the record. That
17 was on page 245 under (c), cumulative impacts.

18 There was a modification to the fifth
19 sentence --

20 HEARING OFFICER BOUILLON: Wait, I
21 haven't got that far yet. I'm not down to 245
22 yet.

23 MS. MacLEOD: I'm, sorry -- oh, I'm
24 further than you are?

25 HEARING OFFICER BOUILLON: Limit

1 yourself to everything preceding 237 at this
2 point.

3 MS. MacLEOD: 237.

4 HEARING OFFICER BOUILLON: Preceding
5 that.

6 MS. MacLEOD: I have nothing to add.

7 HEARING OFFICER BOUILLON: Okay.
8 Specifically, let me ask you, with regard to the
9 change requested on 234, which is listed at the
10 bottom of page 3 of their comments, with the
11 insertion regarding impacts to Burney Falls is
12 appropriate? I believe it is, having reviewed the
13 record.

14 MS. MacLEOD: Mr. Bouillon, is your
15 question just regarding the words, regarding
16 impacts to Burney Falls?

17 HEARING OFFICER BOUILLON: Yes. Not the
18 second half of their comment.

19 MS. MacLEOD: Right. That's --

20 HEARING OFFICER BOUILLON: That's
21 acceptable?

22 MS. MacLEOD: -- fine.

23 MS. PRAUL: Are there sections up to the
24 point where Ed has asked you to stop that you
25 could point out that you believe that there are

1 supplemental testimony?

2 MS. MacLEOD: I have concern about the
3 lengthy insert that's in page 234 rising to the
4 level of something that is new there.

5 I also believe that the PMPD properly
6 addressed the introduction of data that was
7 provided in a declaration from Dr. Fox, and I was
8 not certain that what goes in here that relies on
9 that data further was appropriate.

10 We do agree with the last sentence which
11 is six or seven lines of this large insert on page
12 234, which does actively sum up that there has
13 been disagreement between the staff and Three
14 Mountain Power --

15 HEARING OFFICER BOUILLON: In fact,
16 that's pretty directly quoted out of --

17 MS. MacLEOD: That was out of the
18 stipulation.

19 HEARING OFFICER BOUILLON: -- the
20 stipulation.

21 MS. MacLEOD: And we believe that what
22 is above that goes on to further argue what we
23 believe had been stipulated to as between staff
24 and Three Mountain Power.

25 HEARING OFFICER BOUILLON: Let me ask

1 you, turning to page 240 at this point, the
2 sentence to which staff suggests a change at the
3 bottom of the first full paragraph there, given
4 the extreme variability in the hydraulic
5 conductivity of wells in the Burney area, they
6 suggest changing the -- basically changing the
7 word project wells to nearby wells.

8 But what I'd like both parties to give
9 me a little help on here, when you do this new
10 testing, you determine the impact upon the nearby
11 wells, do you not? By taking water out of the
12 project wells, is that correct?

13 MR. McFADDEN: That's correct. If I may
14 I'd like to expand on it. The test actually has
15 several steps. And in those steps one of the
16 steps requires that we test the well and determine
17 the drawdown in the project well as a prelude to
18 determining aquifer parameters based on perhaps
19 that single point, to try to set up the then more
20 detailed aquifer test using the monitoring wells,
21 which should be a little bit more dispositive of
22 the impacts on the wells that might be nearby.

23 So, actually written either way it would
24 be correct. But the objective of the entire
25 testing program is to determine the magnitude of

1 drawdown and hence calculated impact in the
2 adjacent wells.

3 HEARING OFFICER BOUILLON: It seems to
4 me that there is agreement among the parties upon
5 that particular topic. And since there is time
6 for comment left, I would ask that the parties
7 discuss this matter and see if they can come to
8 appropriate language on the wording of that
9 sentence. Whether it's in the form suggested by
10 the applicant, or --

11 MS. MacLEOD: Mr. Bouillon, the change
12 that they've made is acceptable.

13 HEARING OFFICER BOUILLON: What's that?

14 MS. MacLEOD: The change they have made
15 is acceptable. We believe that it was stated
16 accurately, but this is also accurate.

17 HEARING OFFICER BOUILLON: Just to
18 clarify, on page 243 in the third sentence, the
19 staff requests replacing the word product with
20 produced.

21 I would note that the word product was
22 from the final staff analysis, and this Committee
23 assumed that it was a word of art used by the
24 staff's expert. And generally, if I might be
25 corrected, it was art in its purest form.

1 MS. HOLMES: We make typographical
2 errors, too.

3 HEARING OFFICER BOUILLON: Turning then
4 to page -- the bottom of page 5 of their comments
5 dealing with condition GE01 on page 299, and also
6 300, we have a typo.

7 I don't know where 56 days come from. I
8 think it probably started out as 5, somebody hit
9 the 6 key, tried to erase it and didn't, and put
10 in the 5 anyway.

11 I notice in the applicant's comments
12 they had 15. Someplace I think I read 10. I'd
13 like to know, as between the parties that are here
14 today, if we can reach an agreement as between 5,
15 10 and 15 for the three places on page 299 and
16 300?

17 The applicant asked to submit it 15 days
18 early. The staff only asked for it five days
19 early. It would seem to me the applicant would be
20 very happy with the five.

21 MR. McFADDEN: It appears to me, as I
22 recall, looking at this earlier, that there are
23 two instances where a longer period of time is a
24 little bit detrimental to the applicant. And one
25 period where longer is beneficial to the

1 applicant.

2 We selected 15 because we looked at the
3 FSA and looked at what the original testimony was.
4 We'd like to stay with what the FSA said.
5 However, if the Committee should decide that a
6 different period of time is appropriate, we can
7 live with our proposal or the staff's.

8 HEARING OFFICER BOUILLON: Okay. Your
9 preference then is for what the FSA had
10 originally?

11 MR. McFADDEN: Yes, that's correct.

12 MR. BUELL: Staff would also support 15
13 days, since that's what we originally proposed in
14 our FSA.

15 HEARING OFFICER BOUILLON: Sold at 15.
16 I think with respect to the balance of staff's
17 comments that we don't need any further comments
18 unless the applicant feels some are necessary.

19 And we understand their requests. Some
20 of them we agree with, some of which we don't.
21 But, in any event, I don't think we need any
22 further comments on them.

23 MS. MacLEOD: We have no further
24 comments.

25 HEARING OFFICER BOUILLON: And with

1 respect to the staff's comments, we will make,
2 with regard to page 1 we will make some mention of
3 the new name of the applicant. Although it was
4 apparently outside the evidence.

5 MS. MacLEOD: I'm sorry, you're on the
6 applicant's comments now?

7 HEARING OFFICER BOUILLON: Yes.

8 MS. MacLEOD: I think you just misspoke
9 and referred to the staff.

10 HEARING OFFICER BOUILLON: I'm sorry.

11 MS. MacLEOD: Yes, if you --

12 HEARING OFFICER BOUILLON: We will make
13 reference to Covanta as appropriate.

14 The next change for which we might need
15 some discussion, I want to note that with regard
16 to page 18, the citation to the appropriate
17 sections of the guidelines, I don't think we need
18 any further comments on this, although I would
19 appreciate staff's position on it.

20 It does not have to be at this hearing,
21 but perhaps they could look at those comments and
22 give us some written comments. I also intend to
23 ask the Committee's attorney, Mr. Blees, what he
24 thinks about this. And we will respond
25 accordingly. But I don't think we need to discuss

1 it here.

2 With regard to compliance and closure,
3 the applicant also has a typo. I believe
4 referring to page 31, not 36. And page --

5 MR. McFADDEN: That's correct.

6 HEARING OFFICER BOUILLON: -- 32 not 37.

7 MR. McFADDEN: And we got those page
8 numberings from the webpage edition. And we
9 didn't transfer it over to the --

10 HEARING OFFICER BOUILLON: I had
11 suspected that might be the case.

12 MS. MacLEOD: I should mention, Mr.
13 Bouillon, just for your informational purposes,
14 that for instance you sent out the web version on
15 April 13th. I work in San Francisco, and I
16 received the hard copy, thank you for those
17 difficult words, on the day that we prepared these
18 comments, on the 24th.

19 HEARING OFFICER BOUILLON: That's fine.

20 MS. MacLEOD: So I'm just saying that,
21 so that it takes a long time for the -- I don't
22 know if it's for the docket office to get them
23 out, or if it's a mail thing. But the only
24 version that has been available to us was the
25 internet version, and the pagination was off and

1 on.

2 HEARING OFFICER BOUILLON: In any event,
3 I'd like to ask the staff if they have any
4 disagreement with items 1 and 2 under compliance
5 and closure?

6 MR. BUELL: Staff believes that both
7 number 1 and 2 under compliance and closure are
8 actually unnecessary. The decision, as currently
9 drafted, is actually correct in stating it as we
10 had stated in our compliance testimony to the
11 Committee.

12 I have Connie Bruins here, who, if you'd
13 like a more detailed explanation as to why that's
14 the case, but --

15 HEARING OFFICER BOUILLON: Turning now
16 to air quality at page 102, that is a very
17 confusing subject. And I think we have no
18 disagreement about what the facts are.

19 I had reviewed the Committee's earlier
20 writing in the PMPD, and I suggest -- I'd like
21 comments upon a suggestion that if I change that
22 sentence beginning with the word "Even" to read:
23 "Even if" and then striking "from TMPP through
24 requirements" and inserting: "Even if the area is
25 attainment or unclassified for some of the

1 pollutants, it will be subject to federal
2 prevention of significant deterioration review."

3 Would either party have any problem with
4 that statement?

5 MS. MacLEOD: Could you repeat that?

6 HEARING OFFICER BOUILLON: All right.

7 MS. MacLEOD: Where you are and --

8 HEARING OFFICER BOUILLON: Let's say I
9 strike that whole sentence beginning with the word
10 "Even."

11 MR. McFADDEN: I can't find that
12 sentence right now.

13 MS. MacLEOD: Right. On what page,
14 again?

15 HEARING OFFICER BOUILLON: Page 102.

16 MS. MacLEOD: 102.

17 MR. McFADDEN: Page 102, second
18 paragraph.

19 HEARING OFFICER BOUILLON: Second
20 paragraph, about six or eight lines from the
21 bottom. There's a sentence --

22 MR. McFADDEN: I found it.

23 HEARING OFFICER BOUILLON: -- beginning
24 with the word "Even."

25 MR. McFADDEN: So you're proposing to

1 delete that --

2 HEARING OFFICER BOUILLON: I'm proposing
3 to delete that whole sentence, and change it to
4 "Even if the area is attainment or unclassified
5 for some of the pollutants it will be subject to
6 federal prevention of significant deterioration
7 review.

8 MS. HOLMES: You mean the project not
9 the area --

10 HEARING OFFICER BOUILLON: Excuse me?

11 MS. HOLMES: The project would be
12 subject to the requirements, not the area?

13 HEARING OFFICER BOUILLON: The project
14 will be, yes. I think that says the same thing as
15 the applicant is looking for.

16 MR. RATLIFF: Could you give me just a
17 minute?

18 HEARING OFFICER BOUILLON: Excuse me?

19 MR. RATLIFF: Could you give me just a
20 minute to think about that?

21 HEARING OFFICER BOUILLON: You have a
22 week to think about, actually, two weeks, because
23 if you don't like it, you can make some comments
24 about it.

25 MR. McFADDEN: Mr. Bouillon, I think our

1 point was perhaps to indicate that not only are we
2 subject to PSD review, but also the NSR review.
3 We don't escape either of the two sets of
4 regulations.

5 And I don't know that the language
6 change that you proposed captures that we're
7 subject to both.

8 MR. RATLIFF: My fear is that the
9 sentence you inject is a bit of a non sequitur.
10 They are, in fact, subject to NSR and PSD
11 requirements. The area is subject to both NSR and
12 PSD. They are nonattainment for the ozone
13 standard, at least the County is -- the Air
14 District is.

15 I'm not quite sure what your sentence is
16 trying to say that makes sense.

17 The PSD applies, the PSD requirements
18 apply where you are in attainment.

19 HEARING OFFICER BOUILLON: But they,
20 nevertheless, must mitigate whatever impact
21 they're creating.

22 MR. RATLIFF: Right. But that's not
23 pursuant to the PSD standards. That's --

24 HEARING OFFICER BOUILLON: That's the
25 NSR requirement.

1 PRESIDING MEMBER KEESE: Are you
2 supporting applicant's suggested language?

3 MR. RATLIFF: Well, yes, I mean the
4 applicant has made a valid point, at least, and I
5 just -- I think what you're suggesting for a
6 sentence may be still confusing.

7 And I'm not sure if the applicant has
8 another sentence they want to put in, but --

9 MR. McFADDEN: Actually, looking at the
10 very first sentence of the second paragraph,
11 clearly says that provided everyone recognizes
12 that a plant of this size is a major stationary
13 source, is required to meet new source review
14 requirements.

15 And so, since it's clear on there I
16 guess it doesn't need to be repeated down below.
17 And your comment as to change, it would be okay
18 with the applicant.

19 Okay, you have to re-read the whole
20 paragraph. The point that we want to have made,
21 we think should be made, is that we are under both
22 new source review requirements and PSD
23 requirements.

24 HEARING OFFICER BOUILLON: I don't think
25 there's any question of that.

1 MR. McFADDEN: Yeah.

2 MR. RATLIFF: Yeah, I would just
3 recommend taking out the first phrase of the
4 sentence.

5 MS. MacLEOD: Yeah.

6 HEARING OFFICER BOUILLON: Okay. With
7 regard to page 119, I'd like to draw your
8 attention there, the difference between NO2 and
9 NOx.

10 Applicant makes the point that in the
11 second sentence the NO2 should be changed to NOx.
12 In referring to air quality table 8, which we have
13 copied from the FSA, that, in itself, refers to
14 NO2 not NOx, as does the entire discussion in the
15 FSA to which refer exhibit 64, page 32.

16 I would like the applicant to explain
17 why we should change it.

18 MR. McFADDEN: Technical comment
19 provided by our expert who's not here, and we
20 couldn't amplify if my explanation is not
21 sufficient.

22 But my understanding is that the
23 pollutant is NOx, meaning oxides of nitrogen in
24 whatever form that they appear both NO and NO2, as
25 opposed to merely NO2, which is one of the species

1 of the pollutant.

2 And that's what I understand the case to
3 be. And that's why the correction.

4 HEARING OFFICER BOUILLON: On that point
5 I would request that the applicant provide further
6 comment. And the staff, for that matter,
7 indicating their agreement or disagreement with
8 that requested change.

9 And if that change is going to be made,
10 whether or not a change needs to be made in the
11 air quality table 8, or some other source has to
12 be cited for a change.

13 Where in the record would I find the
14 reference to NOx as opposed to NO2?

15 MR. BUELL: I have Mr. Tuan Ngo here who
16 can confirm or deny what I'm about to say, but the
17 ambient air quality standard is for NO2, not for
18 NOx. There's no ambient air quality standard for
19 NOx.

20 Marty is correct when he says that the
21 pollutant, when you look at emissions, is referred
22 to as NOx, or oxides of nitrogen. But
23 specifically, the ambient air quality standard
24 that's referred to, table 8 is NO2.

25 So, to make a long story short, the PMPD

1 is correct the way it's written.

2 MR. McFADDEN: We'll provide comment
3 back, because we have exceeded my knowledge of the
4 circumstances.

5 HEARING OFFICER BOUILLON: That's fine.
6 Page 121, we may have a source of disagreement
7 here. The requested change by applicant.

8 The applicant has requested that a
9 sentence be stricken which states that the
10 emissions during commissioning will be counted
11 towards the annual emission limits, and they say
12 that's not a requirement of the ATC permit.

13 I'm aware that there is a difference of
14 opinion among the various air districts in this
15 state. We will review the permit, and I'd ask,
16 incidentally, the parties if these comments were
17 forwarded to the Air Pollution Control District,
18 either set of them? Do you know? I looked, I did
19 not --

20 MR. McFADDEN: I'm not -- I don't know
21 that ours were.

22 HEARING OFFICER BOUILLON: Because
23 they're an interested party and not an intervenor.
24 They may not have received it, and may not be
25 responding to those comments.

1 MR. BUELL: Staff's comments, we do not
2 forward a hard copy to the District since they're
3 not on the POS list. But we did email -- they're
4 on our email distribution. So they did receive
5 them in that context.

6 I can make sure they get a hard copy,
7 also.

8 HEARING OFFICER BOUILLON: Given the
9 fact that there is a difference of opinion among
10 the various air districts in the state, I would
11 like some written comments from staff as to the
12 position of the Staff of the Energy Commission
13 with respect to that requirement.

14 MR. RATLIFF: Well, I could tell you
15 what it is right now. We've been requiring that
16 commissioning emissions be included, so I'm told.
17 And that would be the same requirement that we
18 would have here, which is that it is included.

19 MS. PRAUL: For the first year.

20 MR. RATLIFF: Right. It only occurs
21 once.

22 MS. PRAUL: And so does that assume that
23 the offsets that have been provided for the
24 project include an adequate amount for the
25 commissioning in the first year?

1 MR. RATLIFF: I would assume so.

2 HEARING OFFICER BOUILLON: Let me ask a
3 question to all the parties here, since we have
4 this statement in the PMPD, and we do not have a
5 similar statement in the ATC, is there a condition
6 of certification which says that those emissions
7 are going to be counted?

8 MR. RATLIFF: That's my understanding of
9 the -- well, go ahead, Tuan, do you want to speak
10 to this.

11 HEARING OFFICER BOUILLON: We can bring
12 him up, as long as he's here. And I'd like the
13 number of it, please.

14 MR. NGO: My name is Tuan Ngo. I'm with
15 the air quality section. The condition that you
16 mentioned was condition AQ42.

17 HEARING OFFICER BOUILLON: I'm sorry,
18 what?

19 MR. NGO: Condition AQ42.

20 HEARING OFFICER BOUILLON: 42?

21 MR. NGO: Yes.

22 HEARING OFFICER BOUILLON: All right.
23 I'd like to ask the applicant now, and this may be
24 beyond the scope of expertise of those present. I
25 notice that no comments were offered upon that

1 condition of certification. And that does include
2 initial commissioning.

3 MR. McFADDEN: I didn't make the
4 comment. I would say it appears to be an
5 oversight that the condition should be changed. I
6 don't know that that's verbatim from the ATC, and
7 I don't think it is, is it?

8 MR. NGO: I don't recall.

9 MR. McFADDEN: Yeah. That's what our
10 contention is, is basically the comment is that
11 AQ42 is -- and it doesn't say that in some words,
12 and so if we believe that line 6 should be changed
13 for consistency between the ATC and the PMPD, then
14 we think that the condition of certification in
15 this regard should also be consistent between the
16 ATC and the PMPD.

17 HEARING OFFICER BOUILLON: If I might
18 make an observation here, with regard to all of
19 the air quality conditions, -- well, I'm not going
20 to say all, but most of them, at the end of each
21 condition, itself, before the verification, it
22 either says brackets PSD, or it says brackets non-
23 PSD.

24 The Committee has assumed that those
25 that say brackets PSD were ones that were meant to

1 conform with the PSD issued by the Air District.

2 And that the ones that were non-PSD were
3 meant to be Commission-imposed conditions based
4 upon their analysis. Is that correct, first of
5 all?

6 MR. BUELL: My understanding is that
7 those designations were added by the District, and
8 the reason that they were done is because some
9 conditions related to the PSD aspect, or permit
10 issued by the District; and some were not.

11 And the purpose is to distinguish
12 between draft PSD conditions at the time when the
13 final DOC was issued, and conditions required
14 solely to meet NSR requirements.

15 HEARING OFFICER BOUILLON: Having that
16 in mind, then, I would ask the staff to review air
17 quality 42, as well as the statement on page 121,
18 and provide some written comments with respect to
19 whether or not, given what I will at least at this
20 point assume, the accuracy of the applicant's
21 position that it is not required by the PSD.

22 Is that condition with regard to
23 inclusion in the annual limits still required.
24 And if it is not, whether or not that would
25 require the issuance of a revised decision as

1 opposed to an errata.

2 And I would like the applicant's comment
3 on that latter question.

4 MR. RATLIFF: Can I just see if I
5 understood what you're saying. You're saying
6 that, you're asking if -- you're asking the staff
7 to review to see if, in fact, this is a
8 requirement -- this is a common requirement of
9 other air districts, and this Air District in
10 particular?

11 HEARING OFFICER BOUILLON: What I'm
12 asking is if we assume, as I think will be borne
13 out by the facts, that the Air Quality District
14 does not require that the commissioning emissions
15 be included in the first year's total, does the
16 Commission Staff, nevertheless, still, in light of
17 that, recommend that it be so included? As it
18 appears that's what the condition says.

19 MR. RATLIFF: That's right, well, I
20 think we can answer that --

21 HEARING OFFICER BOUILLON: But
22 apparently what he said was that these conditions
23 were based upon the draft PSD, which may or may
24 not have included that as a condition. I don't
25 know the answer to that. And I don't know that

1 any of you know, as we sit here, or whether or not
2 it's been reviewed since that time. And if any of
3 you can comment on it, I'd be glad to hear it.

4 MR. RATLIFF: And we don't know.

5 HEARING OFFICER BOUILLON: All right.

6 MR. RATLIFF: But we do know, or at
7 least Mr. Ngo has told me that in our other cases,
8 the staff has required that the commissioning
9 totals be placed as a requirement for the
10 emissions limits, that they are included in those
11 limits.

12 So my understanding of this is that
13 staff would be recommending this be the case
14 whether or not it's included in the draft PSD.

15 HEARING OFFICER BOUILLON: All right, if
16 there's any change then to that statement I would
17 appreciate it in writing. And if the applicant
18 would care to submit anything else on that topic
19 they can do so.

20 With regard to page 122, the applicant
21 has correctly pointed out that no cumulative
22 impact analysis was needed or performed by staff,
23 and that change can certainly be made.

24 They then cite their efforts in that
25 regard and their analysis, and while I do not

1 disagree with that, and as I recall reading it
2 somewhere, I would ask the applicant if they would
3 furnish me with a citation to the record for that
4 statement.

5 With regard to page 124, this is a
6 confusing subject to, I think, everyone. And I
7 agree with the statements made by applicant.
8 Whether or not I agree with the suggested changes,
9 I'm not so sure. And I would ask if staff has
10 reviewed those requested changes and whether or
11 not they have any position on them.

12 MR. RATLIFF: Well, we did review them,
13 and we discussed them among ourselves, and I
14 believe we think that they're correct. It's a bit
15 of a splitting of hairs, I think, since state BACT
16 is federal LAER, so it doesn't change any of the
17 requirements that they would be subject to to make
18 this distinction.

19 So we don't really oppose the change,
20 nor do we recommend it. It doesn't seem
21 particularly important to us.

22 HEARING OFFICER BOUILLON: And you would
23 agree that if the changes are made that it's not
24 going to reflect any substantive change in the
25 decision?

1 MR. RATLIFF: Right.

2 MR. McFADDEN: We discussed this among
3 ourselves, realizing perhaps that we were
4 splitting hairs. But in the light of the appeal
5 by one of the intervenors to the EAB, we felt that
6 absolutely clarity in this was necessary to help
7 us out.

8 HEARING OFFICER BOUILLON: Turning now
9 to page 128. I recall either hearing in the
10 testimony or reading in the written testimony the
11 change, the comparison of 2 ppm reached over three
12 hours being equivalent to 2.5 ppm averaged over
13 one hour.

14 But in a cursory look for it I couldn't
15 find it. And if someone could provide me a
16 citation to the record, I would appreciate it.
17 And then we could consider how that would be
18 included. I'm not sure whether that even was in
19 the applicant's testimony or in staff testimony.

20 MS. MacLEOD: Excuse me, Mr. Bouillon.
21 Just for the portion of this that is the 2.0 over
22 three hours is equivalent to the 2.5 over one? Is
23 that that --

24 HEARING OFFICER BOUILLON: That's
25 correct, yes.

1 MR. RATLIFF: Mr. Bouillon, as I
2 understand it, that is correct as a regulatory
3 matter, but may not be correct as a technical
4 matter inasmuch as EPA is saying that they're
5 equivalent for its purposes.

6 HEARING OFFICER BOUILLON: Excuse me,
7 did you say the EPA says they are equivalent?

8 MR. RATLIFF: For regulatory purposes.

9 HEARING OFFICER BOUILLON: Yes, but as a
10 matter --

11 MR. RATLIFF: But they may not be
12 equivalent as a technical matter, and I can let
13 Mr. Ngo talk about that, if you want the more
14 technical explanation of it, but this is not a
15 change that we would recommend.

16 HEARING OFFICER BOUILLON: And as a
17 technical matter, is there evidence in the record
18 to the contrary?

19 MR. RATLIFF: I'm not sure.

20 HEARING OFFICER BOUILLON: If there is,
21 I would appreciate it if you'd supply me with it.

22 Turning to page --

23 MR. RATLIFF: We might also just point
24 out that there is nothing, there is no finding or
25 conclusion or condition that is affected by that

1 change. Just as a matter of information.

2 HEARING OFFICER BOUILLON: I agree.

3 With regard to page 133, condition of
4 certification air quality 1, this was a staff-
5 recommended condition of certification. And in
6 reading it I'm not -- first of all, I'm not so
7 sure what it says, what the condition, itself, is,
8 other than they're supposed to get a PSD permit.

9 Is there more to it than that?

10 MR. RATLIFF: Well, I think, if I
11 understand your question, and if I understand
12 their suggestion, I think they want the note
13 deleted because they have now received the
14 biological opinion.

15 HEARING OFFICER BOUILLON: That's
16 correct.

17 MR. RATLIFF: And the PSD permit is
18 final. Well, it's not final because it's under
19 appeal, I'm sorry. But at least it's been issued.

20 HEARING OFFICER BOUILLON: That's going
21 to be my next -- we'll come to that later.

22 MR. RATLIFF: Okay.

23 HEARING OFFICER BOUILLON: But does the
24 condition do anything more? I'm not even sure the
25 condition, itself, the way it's worded, because we

1 adopted the staff's wording, it doesn't seem,
2 other than the verification part, it doesn't seem
3 to require the applicant to do anything.

4 MS. MacLEOD: It reads like a
5 disclaimer.

6 HEARING OFFICER BOUILLON: Excuse me?

7 MS. MacLEOD: It's a disclaimer, I
8 believe, more than a condition.

9 MR. RATLIFF: I think it's just
10 information.

11 MS. MacLEOD: Yes.

12 MR. BUELL: If I recall correctly, this
13 condition is directly from the DOC. This one was,
14 and I think staff had some of our similar
15 discussions internally that yes, it doesn't say
16 anything. But it was there. The District felt it
17 necessary to put this condition in for their
18 purposes. The verification is staff's and not the
19 District's.

20 HEARING OFFICER BOUILLON: It seems to
21 me this condition simply should be one requiring
22 the applicant to obtain a PSD permit and a
23 biological opinion, and maybe the note reworded to
24 state that they've already done that, and that a
25 copy needs to be furnished to the staff. And that

1 they've already done that, too.

2 Now, let's turn to the meatier question
3 of this. Since it is under appeal, although I
4 suppose that's outside the record of these
5 proceedings, given that, do any of the parties
6 have any comments about upon whether or not either
7 the biological opinion or the PSD permit is final,
8 quote-unquote?

9 MR. RATLIFF: Subject to check, my
10 recollection of how the federal regulations read
11 is that a permit is not final when it's under
12 appeal. And so -- not final in the sense that you
13 can actually go ahead and construct. You can't do
14 that.

15 And I think that's what finality means
16 in this context. So, I think it is not
17 technically final until the appeal is concluded.
18 And by concluded I mean concluded with the
19 Environmental Appeals Board saying that it's
20 valid.

21 HEARING OFFICER BOUILLON: Do you have
22 anything contrary to that? I tend to side with
23 Mr. Ratliff --

24 MS. MacLEOD: I'm not an expert in this
25 area, but I tend to agree with Mr. Ratliff, to the

1 extent that a permit is under appeal. For most
2 uses of the word final I would consider it not
3 final.

4 The biological opinion has been issued.
5 HEARING OFFICER BOUILLON: Has been
6 what?

7 MS. MacLEOD: The biological opinion has
8 been issued. So, --

9 MR. McFADDEN: Well, that's another
10 point that Les is making, is that all of the
11 matters under appeal have been proffered to the
12 EAB. And the only remaining matter under appeal
13 is the BACT determination.

14 So, there are no elements of the appeal
15 that deal with the biological opinion. So, it's
16 been issued and it is not under appeal as it
17 relates to the PSD permit.

18 HEARING OFFICER BOUILLON: All right.
19 Page 141 with regard to the speed, whether it
20 should be 10 miles an hour or 15 miles an hour.

21 It appears that the staff-recommended
22 condition of certification was intended, not
23 necessarily to conform to the PSD, but it should
24 at least be consistent with it, I would think.

25 Does staff have any feelings about 10

1 versus 15?

2 MR. RATLIFF: Our preference is for 10.

3 HEARING OFFICER BOUILLON: Excuse me?

4 MR. RATLIFF: Our preference is for 10.

5 HEARING OFFICER BOUILLON: Staff's --

6 MR. RATLIFF: Yes. I mean that was

7 viewed as mitigation of the dust impact.

8 MR. McFADDEN: Mr. Bouillon, we asked

9 for consistency. We can live with 10.

10 With regard to 145, the applicant makes

11 some comments that I don't believe require any

12 change in the PMPD. It has to do with

13 interpretation to be given a certain term and --

14 MS. MacLEOD: We included this comment

15 here, not to ask you to make a change, but just to

16 close the loops, to confirm that everyone had the

17 same understanding as to the interpretation of

18 those words.

19 HEARING OFFICER BOUILLON: I'm going to

20 close the loop and ask the staff whether they

21 agree.

22 MR. RATLIFF: I think maybe it's best

23 for Mr. Ngo to discuss this. Did we want to add a

24 clarification, on 12?

25 MR. NGO: I believe there is a lot of

1 confusion about what the term that we use in the
2 analysis, both by the District and by us.

3 So what I want to do is I took out I
4 guess a few definition that deal with those
5 condition, deal with those language. These are
6 the condition that I have been using with other
7 District. In most recent project, like Pittsburg,
8 Metcalf, Contra Costa Unit 8, Potrero Unit 7.

9 And what I want to do, I want to provide
10 the applicant and the Committee the definition and
11 perhaps we should be able to clear a lot of the
12 confusion out.

13 I already provide the applicant the
14 definition today just a few minutes before the
15 hearing. And I guess all we have to do is just
16 wait for them to see if they can live with the
17 condition, or if they have any better suggestion,
18 change to this. Then we will work with them to
19 get it.

20 HEARING OFFICER BOUILLON: I would
21 encourage the parties to see if they can get
22 together here.

23 MS. MacLEOD: Mr. Bouillon, I think this
24 is just one point we thought needed clarification.
25 Some of these words show up all throughout the

1 sections.

2 We've asked very early on in this
3 process for defined terms, and those requests --
4 we didn't get a response. So, now at this point,
5 we've gone through all the conditions, and we're
6 comfortable that we have an understanding with the
7 people we need to have an understanding with, on
8 all of the points except for this one.

9 And so if we introduce defined terms
10 now, I'm concerned we're going to go back and it's
11 going to rock the, you know, it's going to
12 unsettle things that have previously been settled.
13 And --

14 HEARING OFFICER BOUILLON: I understand
15 you have a problem with the word start-up, or
16 maybe not, I don't know, we'll come to that in a
17 minute.

18 But what I want to point out is that the
19 record in this case indicates an agreement on the
20 part of the applicant to the conditions suggested
21 by staff in their testimony, they agreed that
22 those conditions were acceptable.

23 They did not indicate in the record that
24 they wanted to define the terms along the lines
25 indicated here. So unless there's a compelling

1 reason to do so, and I'm willing to either listen
2 to that or read it in writing, the Committee need
3 not take any position with respect to this
4 particular comment.

5 MR. McFADDEN: I think I'd like to give
6 you a -- if we have to follow up with written
7 comments, we will.

8 MS. MacLEOD: Right, I think the
9 question is -- is not your question that as to our
10 comment 12 on page 145 there's no action that
11 needs to be taken?

12 HEARING OFFICER BOUILLON: That's
13 correct.

14 MS. MacLEOD: Yes.

15 MR. McFADDEN: Oh, --

16 MS. MacLEOD: By the Committee.

17 MR. McFADDEN: Okay, well, I think
18 that's right. We're just trying to make sure that
19 there's some record of an understanding of an
20 interpretation.

21 MR. BUELL: I have in my hands, which
22 I'll have docketed later today, a copy of the
23 emails that were referred to in this comment that
24 I'll have docketed.

25 I would note that the characterization

1 in number 12 is not absolutely correct, but was
2 forwarded to the applicant in regards to the
3 emails.

4 What I quote Tran to say is that he had
5 no problem with the definition a proposed by the
6 applicant, provided that the emissions during the
7 initial startup were counted in the emissions cap
8 of the proposed facility. And that was the
9 staff's position.

10 So, with that clarification, I'll have
11 this docketed.

12 MR. McFADDEN: Our understanding with
13 Mike Cuso's understanding is practically identical
14 for -- we reach his standard for starting the
15 commissioning process, and that 60-day clock when
16 we're starting to make power and tune the plant
17 for the purposes of making power. And that's
18 coincident really with the first steam turbine
19 roll.

20 And we just selected that wording as one
21 that we could point to. We backed off from that a
22 little bit because it has to do with the gas
23 turbine, but on some day we're going to do a steam
24 turbine roll on this project.

25 And when we go to do that steam turbine

1 roll, one of the things that we do is we're going
2 to push the button for the combustion turbine.
3 And that firing, we think, is the one that starts
4 this commissioning process that has a 60-day time
5 limit on it. In Mike Cuso's conditions of
6 certification, as reflected in the PMPD.

7 HEARING OFFICER BOUILLON: Given that
8 the Committee need not make a decision on this
9 matter, I'd like to turn to page 152.

10 And we're coming back to NOx and NO2.
11 The applicant points out that AQ45 calls for
12 emission testing for NOx, and AQ48 requires
13 emission testing for NO2.

14 That is also coupled with the -- if you
15 read both of those in connection with air quality
16 42, which talks about NOx as NO2, I managed to
17 thoroughly confuse myself.

18 And I would therefore like some detailed
19 written comments from the staff as to the
20 appropriateness of the change suggested by the
21 applicant, or the appropriateness of the
22 conditions as they're written. Or alternate
23 changes to reflect the record as it exists.

24 In each case, for any change, I would
25 like an appropriate citation to the record,

1 including some citation from the applicant as to
2 if this condition is going to be changed. It's
3 not a typo in this case.

4 If we're going to change that condition
5 I need a citation to the record as to why that
6 should be so.

7 And the next, I'd like to deal with air
8 quality 52 next. On page 154, I'm going to skip
9 one for a second here, on page 154 the tests for
10 acrolein indicates that it is under investigation
11 by the Air Resources Board, and the language
12 indicates that the applicant should verify with
13 the Air Resources Board the status of the
14 applicability of that test.

15 I think the applicant's understanding
16 there is appropriate, given the condition the way
17 it's written. If there is no approved method of
18 testing it would be very difficult to require
19 them, unless we're going to specify a method.

20 MR. RATLIFF: Staff's intent here is
21 that obviously we don't want them to do a test for
22 acrolein when there is no approved test method.
23 But we would like them to do a source test once a
24 test method is approved. A one-time source test.

25 HEARING OFFICER BOUILLON: And even if

1 it's years down the road?

2 MR. RATLIFF: Yes.

3 HEARING OFFICER BOUILLON: The
4 condition, I don't believe, says that.

5 MR. RATLIFF: No, it's not clear. And
6 we need language to clarify that, what it is.

7 HEARING OFFICER BOUILLON: Do you think
8 the record reflects that request?

9 MR. RATLIFF: I don't recollect -- I
10 really don't know.

11 HEARING OFFICER BOUILLON: If that's a
12 request you're going to make here, I'm going to
13 require that you find me some basis for that in
14 the record, and then argue your case.

15 As soon as you find that basis in the
16 record, if you'll notify the applicant so that
17 they have an opportunity to argue against it. So
18 we're really talking about the next couple of
19 weeks. I don't intend to delay this matter over
20 that point.

21 But I don't believe -- this condition
22 was lifted from the staff's recommendation.

23 MR. RATLIFF: Um-hum.

24 HEARING OFFICER BOUILLON: I don't
25 recall anything in the evidence saying we know

1 there's no test now, but if they ever get one we
2 want them to do the test.

3 If that's in there, that's fine.

4 MR. RATLIFF: Well, but there has been
5 during -- early in this proceeding there was --
6 one of the intervenors raised acrolein as a public
7 health issue. And there was a great deal of
8 discovery and discussion of it.

9 And I believe after that period of time
10 there was informal discussion at CARB about
11 acrolein and about test methods for acrolein. And
12 with what you might call an informal disapproval
13 of any test method that's currently out there for
14 acrolein.

15 And so there is no test method right now
16 that CARB would say is a good method for
17 determining acrolein levels.

18 Eventually we hope there will be one.
19 It would be certainly useful if there is one, and
20 I think a lot of people are thinking about that
21 issue.

22 Our hope is that when one is developed,
23 since this is the toxic air contaminant which
24 seems to have the greatest relevance in our cases,
25 that we would be able to get source testing of

1 each of these plants, each of these facilities
2 after they come on line, in accordance with a new
3 approved test method.

4 If nothing else, it would provide a very
5 useful database to find out, you know, what the
6 acrolein emissions are from the facilities that
7 we've licensed.

8 HEARING OFFICER BOUILLON: All right.
9 Now, dealing with both air quality 52 and 54, the
10 applicant has some similar concern with regard to
11 the meaning of the word startup.

12 And I think our comments with regard to
13 the earlier definition of commencing with the
14 first firing are equally applicable here.

15 It's our feeling that the language we've
16 written will stand, and hopefully there will be no
17 ultimate disagreement between applicant and the
18 staff and other interested parties with regard to
19 the meaning of that word.

20 MR. McFADDEN: Once again, Mr. Bouillon,
21 this word, I think, comes from the ATC, lifted
22 into the staff's proposed conditions of
23 certification.

24 Our understanding is consonant with the
25 Shasta County Air Quality Management District on

1 what startup means in that case.

2 If 60 days after first fire of the
3 turbine, the very first time fuel is introduced
4 into the turbine is the criteria, General Electric
5 will not even be finished with their commissioning
6 work under contract by that time period.

7 I think that the practical matter is
8 that the intention of the Air District, their
9 permit, their permit interpretation has always
10 been that this initial startup is the time at
11 which the power plant is ready to make power.

12 And when you first fire the turbine it
13 is not ready to make power. It is undergoing
14 system mechanical checkouts, some of which involve
15 firing the turbine, including the steam blow and
16 other tests that have to be done on the air
17 condenser, on the wet condenser, all of those
18 pieces of equipment require the input of heat.
19 And that heat does come from the combustion
20 turbine.

21 The length of time to accomplish that is
22 well over 60 days. So it's a misunderstanding of
23 what the term means, not anybody's, I don't think,
24 anybody's intention to impact the project.

25 I think we have to come to an agreement

1 when the 60 days starts. If it is intended to
2 start at the time of the first firing of the
3 turbine, then it can't happen. It can't happen at
4 the other projects that they're talking about,
5 either.

6 HEARING OFFICER BOUILLON: Turning to
7 page 156. Applicant proposes changing the design
8 temperature of the catalyst to minimum operating
9 temperature of the catalyst.

10 MR. McFADDEN: Minor technical change --

11 HEARING OFFICER BOUILLON: Let me --

12 MR. McFADDEN: Okay.

13 HEARING OFFICER BOUILLON: Let me ask
14 you if the staff agrees that that is a minor
15 technical change, and it's within the scope of the
16 evidence presented.

17 The air quality expert is nodding his
18 head yes. And I will accept that.

19 MR. RATLIFF: Could we go back to the
20 last question, discussing about the commissioning
21 period, and see if we can get some closure on that
22 issue.

23 MR. NGO: Back to your question on AQ52
24 and AQ55, regarding the period where we are
25 talking about the initial startup. What I have in

1 mine for those two condition was this initial
2 startup going to supposed to be happen right after
3 the commissioning period end.

4 And the definition I have of the
5 commissioning period is the commissioning period
6 will end or terminate when the plant has completed
7 performance testing, is available for commercial
8 operation, and had initial sale to Power Exchange.

9 So, that will take care of the applicant
10 concern on that. And what I want to do, again, I
11 need to provide some clarification to this to make
12 sure that everything goes smooth.

13 MR. RATLIFF: Maybe we can discuss this
14 with the applicant, and try to work this out --

15 MR. McFADDEN: We need to understand --

16 MR. RATLIFF: Right.

17 MR. McFADDEN: -- how this fits in with
18 startup. We'll draw up a little chart and figure
19 it out.

20 HEARING OFFICER BOUILLON: On page 187
21 with regard to waste management, the public health
22 comment, I think, is appropriate. Although we
23 have the pagination problem based upon the
24 website.

25 MR. McFADDEN: We apologize.

1 HEARING OFFICER BOUILLON: No, that's
2 all right, I was able to find it.

3 MR. McFADDEN: On this one I'd like to
4 point out that it should say the first appearance
5 page 173.

6 (Laughter.)

7 HEARING OFFICER BOUILLON: Anyway, with
8 regard to page 187, which let's have the correct
9 page number, crystallizer waste should be
10 included. I don't disagree with that; in fact, I
11 agree.

12 But my question is should it not say
13 softener and crystallizer waste? I noticed one
14 other point in at least the decision we talk about
15 waste accumulating from both the softener and the
16 crystallizer.

17 MR. McFADDEN: Can we get back to you on
18 that? We think you're right.

19 HEARING OFFICER BOUILLON: Okay.
20 Turning to page 222. I think that is an
21 appropriate insertion to that condition. Does the
22 staff have some disagreement with that suggested
23 change?

24 MS. HOLMES: No.

25 HEARING OFFICER BOUILLON: See how easy

1 this is when I'm right?

2 On page 257 and 258, as well as the
3 recommended change on 267, I think we can discuss
4 them all together. It's either appropriate on
5 all, both places, or in neither.

6 Was it staff's intent to have two
7 separate reports, or could that be included in the
8 annual compliance report?

9 MR. BUELL: Staff has no objection to
10 including that in the annual report.

11 HEARING OFFICER BOUILLON: Under geology
12 and paleontology, pages 299 and 300, I think we've
13 already covered those and agreed on the 15 days.

14 With regard to noise on page 344, the
15 applicant is correct in that their commitment to
16 use a quieter steam blow technology was given
17 somewhat short shrift in the decision in an effort
18 to meet applicant's request for as early a
19 decision as possible.

20 I think that generally that their
21 comment with regard to page 344 is appropriate, if
22 not the specific wording. Does the applicant have
23 any particular feelings about that?

24 MR. BAKER: Good afternoon, I'm Steve
25 Baker, who wrote the staff noise testimony. I

1 agree with what the applicant's asking and I've
2 provided to Mr. Buell a suggestion in writing on
3 how to reword condition Noise7 to appropriately
4 deal with this.

5 I'm proposing that in Noise7, which
6 restricts construction hours, that we include a
7 sentence that removes that restriction for the
8 steam blow process, which has to take place around
9 the clock. Mr. Buell has that.

10 MR. BUELL: I don't have it with me, but
11 I will provide the Committee a copy of that later
12 today.

13 HEARING OFFICER BOUILLON: All right.
14 Going ahead then to page 345 and 346, having read
15 the comments there, I would like to ask first for
16 some oral comments from the staff, and I -- well,
17 we'll just stop there and we'll see where this
18 goes.

19 Do you have any comments about 345 and
20 346, the comments made by the applicant?

21 MR. BAKER: I'd like to take a half a
22 step back and say that regarding the portion of
23 the proposed decision that the applicant is
24 commenting on, I understand what the Committee is
25 doing and I agree with that. Therefore --

1 HEARING OFFICER BOUILLON: You agree
2 with what the Committee has done?

3 MR. BAKER: Yes, sir. Therefore I do
4 not particularly support applicant's comments.
5 And in fact, I disagree with some of the numbers
6 they've used to justify their comment.

7 HEARING OFFICER BOUILLON: And given
8 that, I would like staff to provide me with some
9 written comments about the comments made by the
10 applicant. They have gone into some detail.

11 Item number two, there, on page 345 and
12 346, items (a) through (e), and I would like a
13 written staff response to those comments.

14 And if you can't get it by Monday, then
15 you have until the 14th -- no, well, so that it's
16 on my desk when I walk in here on the 14th.
17 Because I won't be here in between.

18 But the Committee would be available to
19 review it, so in any event, can I get an estimate
20 from you about when you could prepare it?

21 MR. BAKER: I can have it to Mr. Buell
22 by Monday, sometime Monday. I can email it to
23 him.

24 HEARING OFFICER BOUILLON: Mr. Buell,
25 you'll get it to the Committee then --

1 MR. BUELL: Yes.

2 HEARING OFFICER BOUILLON: -- by
3 Tuesday? Is that appropriate?

4 MR. BUELL: That's appropriate.

5 HEARING OFFICER BOUILLON: I don't know
6 how many levels you have to go through after you
7 get it.

8 MS. MacLEOD: Mr. Bouillon, may I add
9 something here on this issue?

10 HEARING OFFICER BOUILLON: Yes.

11 MS. MacLEOD: This is the one what has
12 now become a major issue, and potentially poses a
13 major obstacle to the project. So we wanted,
14 first of all, the Committee to be aware of how
15 significant the issue is.

16 There were alternatives, I don't want to
17 reiterate what's in the comments, I won't repeat
18 this. There were alternative approaches that were
19 recommended in the FSA. The applicant reached
20 agreement with staff.

21 We thought this issue had been resolved,
22 and so we did not treat it as a disputed issue.
23 If it has now become -- and we thought perhaps
24 this was a correction.

25 If this has now become a disputed issue,

1 which it appears based on these comments that it
2 has, the applicant will be submitting additional
3 written comments to further comment on this point.
4 And to make the Committee aware of the
5 significance of the issue to the construction of
6 the project.

7 I also wanted to ask if Mr. McFadden
8 could have an opportunity at this point to explain
9 a little bit to you what this means.

10 HEARING OFFICER BOUILLON: Certainly.

11 MS. MacLEOD: Okay.

12 MR. McFADDEN: The understanding that we
13 had, and how exactly we came to it I can't say,
14 was that the mitigation, the appropriate
15 mitigation in this case was to conform to the
16 LORS, which in this case is the Shasta County Air
17 Quality -- no, not Air Quality -- Shasta County
18 general plan requirement for 50 dba LEQ as a
19 general noise level requirement.

20 And then address, as was proposed by the
21 staff in their alternate, the mitigation of the
22 specific receptor that would most likely be
23 affected if the 50 dba LEQ were achieved.

24 And there was even some question that 50
25 dba LEQ, whether that represented a significant

1 impact as I understood the testimony, because of
2 the location and the noise and the traffic and
3 things like that.

4 But nonetheless, it was our
5 understanding that we would be meeting the LORS,
6 the 50 dba LEQ. And, at the same time, providing
7 specific and direct mitigation that would reduce
8 to a level less than insignificant under any
9 circumstances, the nearest house, the nearest
10 receptor.

11 In order to move ahead, we have
12 commenced the engineering process for our project.
13 We did commence it with the understanding that I
14 had just said, that that would fully mitigate.
15 And in conformance with the staff's testimony,
16 would reduce any noise impact to less than a level
17 of significance.

18 And it's going to cause us to be in a
19 position of redoing engineering work that we have
20 already engaged upon for the purpose of bringing
21 the project on line as early as possible.

22 Inasmuch as the staff's testimony is
23 that both of these mitigation alternatives provide
24 an acceptable mitigation, we think that accepting
25 the alternate two, and we have embraced Noise2, we

1 never had an intention of not doing Noise2.

2 Noise2 is the mitigation of Mr.
3 Hathaway's residence -- the residence owned by Mr.
4 Hathaway, since he actually doesn't live there.
5 And also to conform to the Shasta County LORS for
6 general noise levels.

7 In addition to the cost of redoing work,
8 there is scheduled delays because of the time
9 spent so far will also be respent.

10 HEARING OFFICER BOUILLON: Mr. McFadden,
11 let me ask you, comment (c), subparagraph (c) to
12 item number 2 says that they're not just revised
13 from what staff recommended at the hearing, but
14 they've been changed in a manner that unreasonably
15 burdens the applicant and is inconsistent with the
16 staff's recommendation at the hearing.

17 Are you saying that what staff was
18 recommending at the hearing was one or the other?

19 MR. McFADDEN: Yes, that was my
20 understanding, and they called them alternative
21 approaches. And in the written testimony the
22 alternative approaches fully mitigated to below a
23 level of significance. That was in the written
24 testimony.

25 HEARING OFFICER BOUILLON: Either of

1 them would?

2 MR. McFADDEN: Either of them, that was
3 my clear understanding.

4 HEARING OFFICER BOUILLON: Is that
5 consistent with what the staff feels its testimony
6 was?

7 MR. BUELL: Yes, sir.

8 HEARING OFFICER BOUILLON: All right, my
9 request would stand, though, I would like those
10 comments with respect to each of the points raised
11 here. Specifically with regard to the noise level
12 determined in the various studies with specific
13 citations to the record. And anything the
14 applicant would care to add to their comments,
15 please do. The more information we get the better
16 off we are.

17 MR. McFADDEN: Yes, sir.

18 HEARING OFFICER BOUILLON: Moving ahead
19 now to page 348, those comments generally I would
20 agree with, given the conversation we just had
21 about the conditions in general in the first
22 place.

23 Obviously if Mr. Hathaway won't let you
24 on his property, we cannot require you to do
25 anything.

1 MR. McFADDEN: As you know, Mr. Hathaway
2 was an intervenor in this project. We've been
3 most recently getting along famously with him,
4 especially in the water. But we do need to
5 protect ourselves against an absolute refusal for
6 some reason beyond our ken.

7 HEARING OFFICER BOUILLON: And then
8 moving ahead to the last comment on page 349, the
9 first comment, (a), the validity of that comment
10 will rise and fall with the discussion we've
11 already had.

12 The second comment, (b), I believe that
13 change is appropriate, but I'd like to get staff's
14 comments on that. Is that -- it's my
15 understanding from the application that the first
16 of those additional mitigation measures, in fact,
17 is in place already, is it not? Standard outdoor/
18 weather enclosures?

19 MR. McFADDEN: No, we don't intend to
20 have standard outdoor/weather enclosures because
21 we intend to have an enclosed turbine building,
22 which is not standard. I think that's what our
23 point is.

24 We believe that it provides, with proper
25 design, superior noise mitigation to a standard

1 outdoor enclosure. And so we wouldn't want to go
2 back and fit the standard enclosure on, as I think
3 that this --

4 HEARING OFFICER BOUILLON: That's what
5 I'm saying, do you agree?

6 MR. BAKER: Yes, sir, I agree. But the
7 condition, fortunately, is written in such a way
8 that it doesn't require that enclosure. The
9 condition uses the word may. It says the
10 mitigation measures to be employed may include,
11 but are not limited to.

12 So, if you wish to change the language
13 in the condition, please go ahead and do it. If
14 you don't wish to, it won't make any difference,
15 because the outdoor enclosure is not required.

16 HEARING OFFICER BOUILLON: All right.
17 Now, having covered the items that I and the
18 Committee thought were important to discuss, first
19 I'll ask the applicant, do you have any comments
20 on any of the other comments that have been raised
21 by any of the parties?

22 MR. McFADDEN: No.

23 MS. MacLEOD: No, we have no other
24 comments.

25 HEARING OFFICER BOUILLON: And now the

1 staff, the same question?

2 MS. HOLMES: I have just a couple of
3 comments.

4 About the water issue, staff filed
5 recommended changes to the PMPD on the water
6 issue. There were two specific items that we were
7 concerned about.

8 The first is that in the areas where the
9 PMPD characterized staff's position, the
10 characterization wasn't complete and staff has an
11 interest in seeing that its testimony is
12 accurately characterized.

13 We're not proposing in those sections
14 that the Committee adopt staff's position as its
15 own. We're quite comfortable with the Committee's
16 ultimate disposition of the water issues and the
17 acceptance of the stipulation that was entered
18 into between staff and the applicant.

19 There was one other issue that came up
20 on water. I have to go back to my notes. I'll
21 refer to the applicant's comments on this issue.
22 I guess they made them orally.

23 In response to staff's recommended
24 changes on page 234 of the PMPD, we are concerned
25 that --

1 HEARING OFFICER BOUILLON: To what?

2 MS. HOLMES: Page 234 of the PMPD. We
3 are concerned that this issue be accurately
4 characterized. It has to do with whether or not
5 there's contribution, and whether or not it's
6 important to the decision.

7 This issue, if you'll recollect from the
8 hearings, deals with whether or not there's
9 connectivity between two aquifers. And staff had
10 concluded that there might be. And the applicant
11 had concluded that there was not.

12 However, to the extent that the PMPD
13 characterizes what would happen if there were
14 connectivity, the record is incomplete, because
15 connectivity addressed several issues, not only
16 outflow over Burney Falls, but also -- reduced
17 outflow over Burney Falls, but also reduced
18 outflow to the other basin, which does support
19 population of endangered species.

20 So we believe that in order to fully
21 characterize the record with respect to what would
22 happen if there were connectivity, the changes
23 that staff has recommended need to be included.

24 We're not recommending that the
25 Committee change any of its conditions or any of

1 its conclusions.

2 HEARING OFFICER BOUILLON: There was one
3 other thing, now that you've brought up water.
4 Off the top of my head I think it's Soil and
5 Water11. In error, we issued a PMPD which did not
6 reflect a more recent agreement among staff and
7 applicant with regard to the payment of certain
8 moneys, either to the project manager or to some
9 money manager designated by the project manager.

10 That additional clause was left out of
11 the PMPD. It was suggested in the staff's
12 comments. I think it is appropriate to include
13 it. And I want to make sure that, in fact, the
14 applicant did not disagree with that comment.

15 MR. McFADDEN: We don't disagree as long
16 as the verification is completion or obligations
17 as the payment of the money. We don't intend to
18 manage those particular programs that we're
19 funding.

20 HEARING OFFICER BOUILLON: Is there any
21 public comment?

22 Hearing none, this hearing is concluded.
23 (Whereupon, at 3:08 p.m., the conference
24 was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of May, 2001.

VALORIE PHILLIPS

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